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Crl.O.P.No.22954 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.22954 of 2019
and Crl.M.P.No.12005 & 12007 of 2019

V.S.Ekambaram @ Mohan

...Petitioner

Vs.

1. The State Rep. by
The Inspector of Police,
CBCID,
Kanchipuram.
2. Sri Mahanth Basanth Dos Bavaji
Madathipathi of Udhasin Bavaji Mutt,
No.32, Nellukara Street,
Kanchipuram.
3. Sri Mahant Advaitanand Maharaj ji,
Sri Panchayati Akhara Bada Udasin Nirvan,
Krishnanagar, Allahabad,
State of Utterpredesh.
(R3 impleaded as per order dt.
18.07.2023 made by this Court
in Crl.M.P.No.8646 of 2023 in
Crl.O.P.No.22654 of 2019)

... Respondents



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PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the entire records in C.C.No.43 of 2013 pending on the file of the learned Judicial Magistrate No.I, Chengalpet, and quash the complaint and all other proceedings.

For Petitioner : Mr.Abdu Kumar Rajarathinam
Senior Counsel
For Mr.S.Ashok Kumar

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

For R2 : Mr.R.John Sathyan
Senior Counsel

For R3 : Mr.M.Muruganantham

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.43 of 2013 pending on the file of the learned Judicial Magistrate No.I, Chengalpet, thereby taken cognizance for the offences under Sections 120(B) & 420 of IPC.

2. The case of the prosecution is that the subject property belonging to the mutt and it was leased to the petitioner's father viz., V.S.Sivarajan by the previous madathipathi. The defacto complainant is the present madathipathi of the mutt and he filed suit against the previous madathipathi and recovered the possession of the subject property from



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the lease holder through the Sub Court, Kancheepuram in O.S.No.21 of 1973. Further the defacto complainant filed execution petition in E.P.No.138 of 2000 and the same is pending. In the mean time, the petitioner approached the defacto complainant and assured that he will not contest the case filed by the defacto complainant and sought for continuing the lease property which was already leased out to his father. Therefore, new lease agreement dated 23.12.2002 was entered between the petitioner and the defacto complainant for a period of 20 years with monthly rent of Rs.4,000/-.

3. It is further alleged that the petitioner and the first accused viz., Selvaraj, who worked as Assistant with the defacto complainant, colluded with each other and falsely informed the defacto complainant that the rent has to be enhanced from Rs.4,000/- to Rs.5,000/- and induced the defacto complainant to execute the second lease agreement. Accordingly, the defacto complainant executed the second lease agreement dated 21.01.2004, without knowing the fact that the lease period was mentioned as ninety nine years, thereby the petitioner gained wrongfully and caused loss to the mutt. Hence, the defacto complainant



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lodged complaint and the same has been registered in Crime No.72 of 2009. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the trial Court in C.C.No.43 of 2013 for the offence under Sections 12B, 420 of IPC.

4. The learned Senior Counsel appearing for the petitioner submitted that the second respondent was informed and he well aware of the second lease agreement for the period of 99 years. The enhancement of rent from Rs.4,000/- to Rs.5,000/- and enhancement of lease amount would itself clear that both the parties agreed for the same and executed before the Registrar. As per the lease agreement itself, the petitioner can very well sub-lease the subject property. Accordingly, the petitioner also sub-leased the subject property for the period of 30 years to the Indian Oil Corporation. In fact, the second agreement for lease was entered between the petitioner and the defacto complainant only for the purpose of sub-lease the subject property to the Indian Oil Corporation. Therefore, no offence is made out for the offence punishable under Section 420 of IPC. Now the civil dispute is converted into criminal case that too without attracting any of the offence under Section 420 of IPC.



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4.1. He further submitted that the second respondent is estopped from lodging any complaint, since he himself is a party and had executed the lease agreement dated 21.01.2004 before the Sub-Registrar. Therefore, he cannot take contrary stand that the content of the lease agreement was wrongly inserted by the petitioner. In fact, the second agreement for lease has been acted upon and accordingly, the petitioner executed sub lease agreement to the Indian Oil Corporation and also promptly paying the rent as per the agreement to the second respondent and the same was also duly received by him.

4.2. Further, the agreement was executed on 21.01.2004 and the complaint was lodged only in the year 2009. There is absolutely no reasons for the delay in lodgment of the complaint. After executing of the lease agreement, the second respondent is enjoying the benefit on the one hand and on the another hand, disputed the document and lodged the complaint. In fact, there was dispute in respect of their leadership of the mutt between the previous madathipathi with the defacto complainant. Thereafter, there was a suit and it was ended before the Hon'ble Supreme



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Court of India in favour of the second respondent. In pursuant to the decree, he filed execution petition for ordering vacant possession of the subject property. The petitioner was not a party to any of the proceedings and without showing him, they themselves filed suit behind his back. Therefore, as against the order of deliver, the petitioner filed Civil Revision Petition before this Court in C.R.P(NPD) No.2509 of 2009 and obtained an interim order of stay dated 25.08.2009.

4.3. Even while pending the interim order, the second respondent had taken steps to vacate the petitioner from the subject property. Therefore, the petitioner also filed a contempt petition in Cont.P.No.1202 of 2009 and the same was ordered in favour of the petitioner. But the Civil Revision Petition is still pending and suppressing the said facts, once again the second respondent filed suit for ejectment in O.S.No.135 of 2017, on the file of the District Munsif Court, Kancheepuram, and it is pending. Therefore, the second respondent cannot permit to blow hot and cold in the same deed. In support of his contention, he relied upon the following reported judgments:-

(i) (2022) 2 SCC 25 – Union of India and ors Vs.

N.Murugesan and Ors.



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***(ii) 2023 SCC OnLine SC 947 – Salib alias Shalu
alias Salim Vs. State of U.P and ors.***

***(iii) 2023 SCC OnLine SC 650 – Chanchalpati
Das Vs. State of West Bengal and anr.***

5. The learned Government Advocate (Crl. Side) filed counter and submitted that there are totally two accused in which the petitioner is arrayed as first accused. During the subsistence of lease agreement dated 23.12.2002, for the period of 20 years, both the accused colluded together and also having intention to cheat the defacto complainant, created another lease deed for the period of 99 years dated 21.01.2004 and got registered the document in Doc.No.155/2004. In the earlier lease agreement dated 23.12.2002, in the preface of the document, the period of lease is clearly stated as tenancy period from 23.12.2002 to 22.12.2022 for the period of 20 years. But the same has not been shown in subsequent lease agreement dated 21.01.2004 and the period of tenancy has been mentioned in words and not in figures. Therefore, it is clearly established the offence committed under Section 420 of IPC.

5.1. Further the statement recorded under Section 161 of Cr.P.C.,



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from L.W.3 categorically proved that the petitioner along with other accused person cheated the defacto complainant by executing another lease deed dated 21.01.2004 that too for a period of 99 years. Therefore, the grounds raised by the petitioner cannot be accepted and prayed for dismissal of the present petition.

6. The learned counsel appearing for the second respondent submitted that the lease deed was executed in the year 2004. From the year 2004, the second respondent tried his level best to register the case. However, after filing the direction petition before this Court in Crl.O.P.No.25450 of 2009, the FIR was registered on the complaint lodged by the second respondent in Crime No.72 of 2009 for the offence under Sections 420 of IPC. Therefore, there was no delay in lodgment of complaint.

6.1. He further submitted that the ingredients for the offence under Section 420 of IPC are clearly established by the defacto complainant. The grounds raised by the petitioner cannot be considered before this Court and it is mixed question of fact and law. Conveniently,



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the petitioner with an intention to cheat the defacto complainant along with the first accused had executed another lease agreement dated 21.01.2004 that too when the first agreement dated 23.12.2002 was very much in existence for the period 20 years. The period of 99 years was stated in words and not in figures. It clearly established that only to cheat the defacto complainant, the subsequent lease agreement was created that too for the purpose of sub-lease the subject property in favour of the India Oil Corporation. On these grounds, the entire proceedings cannot be quashed and prayed for dismissal of the quash petition.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. There are two accused in which the petitioner is arrayed as first accused. Admittedly, the petitioner is a lessee of the subject property with the defacto complainant for the past several years. Subsequently, the lease agreement was extended by execution of subsequent lease deed. Accordingly, in the year 2002 new lease agreement was executed by the second respondent in favour of the petitioner and the same was registered



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in document No.1035 of 2002 dated 23.12.2002 for the period of 20 years. In fact, the subject of the lease deed was printed in English and explained in Tamil and also signed by the defacto complainant viz., the second respondent. Subsequently, on 21.01.2004, another lease deed was executed by the second respondent dated 21.01.2004 and registered vide document No.155 of 2004 on the Office of the Joint Sub Registrar-II, Kancheepuram.

9. The statement of the Sub-Registrar recorded under Section 161 of Cr.P.C., revealed that the defacto complainant was very much present at the time of registration of document No.155 of 2004 and he never objected at the time of registering the document and he understood about the content of the document by explaining in Tamil and only thereafter, he executed the same. If any one objected at the time of execution of the document, it will not be registered. The defacto complainant understood the content, after read it and thereafter without raising any objection, he had executed the same in favour of the petitioner.



10. Further, the document was registered in the year 2004. After the period of five years, the defacto complainant lodged the complainant.

After lodging the complaint, the defacto complainant approached this Court in Crl.O.P.No.25450 of 2009 and this Court by an order dated 24.11.2009, directed the first respondent to register a case on the complaint lodged by the defacto complainant dated 10.07.2009. As directed by this Court, the first respondent registered the FIR in Crime No.72 of 2009 for the offence under Section 420 of IPC. However, there is no explanation by the defacto complainant for the delayed complaint that too after the period of five years from the date of the execution of lease deed dated 21.01.2004.

11. Further, the defacto complainant without any objection, as per the lease deed dated 21.01.2004 receiving rent, till date. In fact, as per the lease deed, once in three years, there is enhancement of rent to the tune of 15%. Accordingly, the petitioner is paying the rent regularly and the same is also receiving by the second respondent. That apart, immediately, after execution of lease deed dated 21.01.2004, the petitioner had executed sub-lease agreement in favour of the Indian Oil



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12. In fact, the subsequent lease deed was executed only for the purpose of execution of sub-lease for 30 years, since the earlier lease deed dated 23.12.2002, had executed only for the period of 20 years. Therefore, the subsequent second lease deed was executed by the second respondent in favour of the petitioner. In order to vacate the petitioner, the present complaint has been lodged as against the petitioner. It is evidence from the earlier suit filed between the rival claimants viz., the second respondent and previous madahipathi in O.S.No.21 of 1973. The same has been ended before the Hon'ble Supreme Court of India and by an order dated 14.07.2000, the Hon'ble Supreme Court of India declared that the second respondent was validly appointed as the head of the mutt in question.

13. Admittedly, the petitioner is not a party to the said proceedings. While it being so, the second respondent filed execution petition in E.P.No.138 of 2000 before the Sub Court, Kancheepuram, against the rival claimants for delivery of vacant possession of the



subject property. Aggrieved by the same, the petitioner herein filed a Civil Revision Petition in C.R.P.(NPD)No.2509 of 2009 and this Court granted an interim stay and it is still pending. In fact, the said order was violated by the second respondent as such, the petitioner filed contempt petition in Cont.P.No.1202 of 2009 and it was ordered in favour of the petitioner by an order dated 13.11.2009. Therefore, after the contempt petition filed by the petitioner, the second respondent lodged the present complaint on 10.07.2009. Therefore, the second respondent's intention is very clear and to vacate the petitioner from the subject property, he lodged the present complaint. Thus it is clear that the second respondent had executed the lease deed dated 21.01.2004 with full of knowledge about the ingredients of lease agreement. Further as per the lease agreement dated 21.01.2004 the second respondent is receiving rent from time to time with enhancement.

14. In this regard, the learned Senior Counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2002) 2 SCC 25** in the ***Union of India and ors Vs. N.Murugesan and ors*** as follows:-



“APPROBATE AND REPROBATE:

26.These phrases are borrowed from the Scott’s law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approve and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

27.We would like to quote the following judgments for better appreciation and understanding of the said



principle:

27.1. *Nagubai Ammal v. B. Shama Rao*, 1956 SCR 451:

*“But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of res judicata or estoppel but on the principle that a person cannot both approbate and reprobate, it is immaterial that the present appellants were not parties thereto, and the decision in *Verschures Creameries Ltd. v. Hull and Netherlands Steamship Company Ltd.* [(1921) 2 KB 608], and in particular, the observations of Scrutton, LJ, at page 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree. Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J.:*



“Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and reprobate the same act”.

The observations of Scrutton, LJ on which the appellants rely are as follows:

“A plaintiff is not permitted to ‘approbate and reprobate’. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument: Ker v. Wauchope [(1819) 1 Bli 1, 21] : Douglas-Menzies v. Umphelby [(1908) AC 224, 232] . The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction”.

It is clear from the above observations that the maxim that a person cannot ‘approbate and reprobate’ is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury’s Laws of



England, Vol. XIII, p. 464, para 512:

“On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it”.

27.2. *State of Punjab v. Dhanjit Singh Sandhu*, (2014) 15 SCC 144:

“22. The doctrine of “approbate and reprobate” is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. V. MR. P. Firm Muar [CIT v. V. MR. P. Firm Muar, AIR 1965 SC 1216]).

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service [Maharashtra SRTC v. Balwant Regular Motor Service, AIR 1969 SC 329] .) In R.N. Gosain v. Yashpal Dhir [R.N.Gosain v. Yashpal Dhir,



(1992) 4 SCC 683] this Court has observed as under: (SCC pp. 687-88, para 10) “10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that ‘a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage’.”

25. The Supreme Court in *Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd.* [*Rajasthan State Industrial Development and Investment Corpn. v. Diamond and Gem Development Corpn. Ltd.*, (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot



approve and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had.”

15. Thus it is clear that the second respondent cannot be permitted to blow hot and cold, fast and loose or approve and reprobate. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. Therefore, the above judgment is squarely applicable to the case on hand, since the second respondent knowingly accepted the benefits of the lease agreement dated 21.01.2004, and he estopped to deny the validity or binding effect on him of the lease deed. Hence, the present complaint as against the petitioner is nothing but clear abuse of process of law with malafide intention.

16. In this regard, it is relevant to extract the judgement reported in **(1992) SCC Crl. 426** in the case of **Bajanlal v. State of Haryana**,



wherein the Hon'ble Supreme Court of India has listed out the following category of case in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:

"102.....

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the ac-caused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;



(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Therefore, the present criminal proceedings is manifestly attended with malafide and maliciously instituted with ulterior motive to wreak vengeance. It is nothing but abuse of process of law and therefore, it cannot be sustained and it is liable to be quashed.

17. Accordingly, the proceedings in C.C.No.43 of 2013 on the



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file of the learned Judicial Magistrate No.I, Chengalpet, is hereby
quashed and the Criminal Original Petition is allowed. Consequently,
connected miscellaneous petitions are closed.

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Internet : Yes

Index : Yes/No

Speaking/Non speaking order

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To

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1. The Judicial Magistrate No.I,
Chengalpet.
2. The Inspector of Police,
CBCID,
Kanchipuram.
3. The Public Prosecutor,
High Court,
Madras.



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